

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal –State Joint Board	)	Docket No. CC 96-45
On Universal Service	)	
	)	
High Cost Fund for	)	WC Docket No. 05-337
Non-Rural Carriers	)	
	)	

**THE COMMENT OF  
THE MIDDLE ATLANTIC REGULATORY COMMISSION AND  
STATE COMMISSIONERS OF THE MACRUC STATES**

These initial joint comments are filed on behalf of certain members of the Mid-Atlantic Conference of Regulatory Utility Commissioners (“MACRUC Members”).<sup>1</sup> The Joint Comments of the MACRUC Members respond to the Federal Communication Commission’s (FCC) Public Notice issued in WC Docket 05-337 on December 9, 2005 (the “December NPRM”).<sup>2</sup> The December NPRM solicits comments on the U.S. Court of Appeals for the 10<sup>th</sup> Circuit’s remand of the FCC’s decision on federal support for the high-cost fund for non-rural carriers under the Telecommunications Act of 1996 (TA 96).

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<sup>1</sup> Current MACRUC Members Are the Delaware Public Service Commission, the Public Service Commission of the District of Columbia, the Kentucky Public Service Commission, the Maryland Public Service Commission, the New Jersey Board Of Public Utilities, the New York Public Service Commission, the Pennsylvania Public Utility Commission, the Virgin Islands Public Service Commission, the Virginia State Corporations Commission, and the West Virginia Public Service Commission. The Kentucky Public Service Commission is not a Signatory to these Comments.

<sup>2</sup> *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-205(2005) (hereinafter, “December NPRM”).

## The Joint Comment

*Preliminary Observations about the Joint Comment.* The MACRUC Members supporting the Joint Comment appreciate the opportunity to respond to the December NPRM. The MACRUC members supporting this Joint Comment particularly appreciate the FCC's decision to extend the Comment period to March 27, 2006. That extension provided the MACRUC Members supporting the Joint Comment the additional time needed to develop this Joint Comment.

As an initial matter, the Joint Comment should not be construed as binding on any State Commission or any individual state commissioner in any proceeding before the respective State Commissions. The Joint Comment is not to be construed as a comment of every state within MACRUC but, rather, the Joint Comment of a majority of the states within MACRUC. The suggested principles set forth in the Joint Comment could change in response to subsequent events. This includes a review of the filed Comments and legal, regulatory, or factual developments at the federal or state level.

*Background to the MACRUC Comment.* The FCC issued the December NPRM following a series of court decisions in the 10<sup>th</sup> Circuit Court of Appeals that remanded two decisions of the FCC purporting to implement Section 254 of the Telecommunications Act of 1996.

In *Qwest v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2003) (*Qwest I*), the court remanded the FCC's *Ninth Opinion and Order*.<sup>3</sup> The *Ninth Opinion and Order* established a support mechanism for high cost non-rural support for

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<sup>3</sup> *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, 14 FCC Red 20432 (1999) (hereinafter "*Ninth Report and Order*").

carriers in a state where the state's average forward-looking cost per line exceeded 135% of a national average cost per line. The *Qwest I* decision questioned the wisdom of meeting the “reasonably comparable” rate obligation of Section 254 using a benchmark cost approach.

In *Qwest v. FCC*, 398 F.3d 1222 (10<sup>th</sup> Cir. 2005) (*Qwest II*), the court remanded the FCC's subsequent determination to base rural high cost support for rates that exceeded two standard deviations from a national rate average.<sup>4</sup> The FCC also set benchmark costs at two standard deviations above a national average cost per access line.

*The December NPRM.* The FCC seeks comment on four important issues. First, the FCC seeks comment on how the FCC should now define the term “sufficient” for evaluating the sufficiency of universal service for non-rural high cost areas under Section 254 of TA-96. Second, the FCC solicits comment on how the FCC should now define the term “reasonably comparable” in meeting the Section 254(b)(3) obligation to ensure that rates and services in rural areas are “comparable” to those of urban areas. Third, the FCC asks whether the FCC should modify the high cost fund for non-rural carriers in light of the Court's ruling on the terms “sufficient” and “reasonably comparable” in Section 254. Finally, the FCC asks whether the FCC should grant the request of the Puerto Rico Telephone Company (PRTC) for a non-rural insular mechanism addressing the unique circumstances of the PRTC.

*The Joint Comment.* The Joint Comment suggests that the FCC consider four general principles in guiding the development of any final regulation. These principles are: 1) the need for an equitable approach; 2)

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<sup>4</sup> *Federal-State Joint Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-249, 18 FCC Rcd 22559 (2003) (hereinafter, “*Order on Remand*”).

the recognition that the current allocation and distribution methodology is stressed; 3) the need to avoid a rushed solution; and 4) the pressing requirement for current and transparent information. These principles, suggested by a majority of the MACRUC Members located in the industrialized and urbanized Middle Atlantic region, provide a solid basis by which to judge any proposed solution to the queries set forth in the NPRM.

The first principle is the need for an equitable solution. The Joint Comment recognizes that there are net contributor and net recipient states even though some net contributor states have carriers that are net recipients within their state. Any FCC solution should balance the needs of all of these states in an equitable and just manner. The MACRUC Members are, for the most part, net contributor states. Those MACRUC Members believe that any resolution of the issues posed in the NPRM must reflect the interests of all states including the net contributor states.

The second principle is the current contribution and distribution methodology is stressed. The Joint Comment suggests that the FCC recognize that the current contribution and distribution methodology is under extreme pressure to meet the universal service objectives established by Congress and articulated in the Telecommunications Act of 1996. This increasing strain is attributable to technological and policy changes in the manner in which universal service is supported and in the range of services sustained by the funding mechanism.

The third principle is the need for a reasoned and carefully considered solution. The Joint Comment recognizes that the current universal service system is undergoing unprecedented stress due to technological and policy changes. However, the Joint Comment urges the FCC to avoid a rushed solution to this problem. Instead, the Joint Comment urges the FCC to

consider a solution based on the complex needs of all of the states including those states that are net contributors to the federal fund.

The final principle is the most pressing issue. The Joint Comment particularly urges the FCC to address the need to provide transparent and current information on the universal service support system. The Joint Comment notes that the most recent information is relatively dated which undermines its value in assessing the sustainability of the current contribution and distribution methodologies. Moreover, the lack of information that is both current and detailed undermines the ability of the MACRUC Members and other parties to provide detailed arguments concerning the impact of the issues set forth in the NPRM and to assess alternative solutions to those issues.

The Joint Comment suggests that any final regulations be developed in light of these principles. The Joint Comment suggests that any solution which does not recognize these general principles may be unstable and subject to litigation.

Respectfully submitted,

MACRUC State Commissions

MACRUC State Commissioners

Dated: March 27, 2006

On behalf of the Delaware Public Service Commission

/s/ Arnetta McRae  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

For the Public Service Commission of the District of Columbia

/s/ Agnes Alexander Yates  
Chair



On Behalf of the Public Service Commission of Maryland,

/s/ Kenneth D. Schisler  
Chairman

/s/ Harold D. Williams  
Commissioner

/s/ Allen M. Freifeld  
Commissioner

/s/ Karen A. Smith  
Commissioner

/s/ Charles R. Boutin  
Commissioner

On Behalf of the New Jersey Board of Public Utilities:

/s/  
JEANNE M. FOX  
PRESIDENT

/s/  
FREDERICK F. BUTLER  
COMMISSIONER

/s/  
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CONNIE O. HUGHES  
COMMISSIONER

/s/  
JOSEPH L. FIORDALISO  
COMMISSIONER

/s/  
CHRISTINE V. BATOR  
COMMISSIONER

Docket Nos. CC 96-45 and WC 05-337  
The Comment of the Middle Atlantic Regulatory Commission and  
State Commissioners of the MACRUC States

William M. Flynn, Chairman  
New York Public Service Commission

/s/\_\_\_\_\_

On behalf of the Public Service Commission of the State of New York

Dawn Jablonski Ryman  
General Counsel

/s/\_\_\_\_\_

Dated: March 24, 2006

Docket Nos. CC 96-45 and WC 05-337  
The Comment of the State Commissions and  
State Commissioners of the MACRUC States

Wendell F. Holland, Chairman  
Commonwealth of Pennsylvania Public Utility Commission

/s/\_\_\_\_\_

On behalf of the Commonwealth of Pennsylvania Public Utility Commission

Joseph K. Witmer,  
Assistant Counsel

/s/\_\_\_\_\_

Dated: March 27, 2006

On behalf of the Virgin Islands Public Service Commission

/s/ Alecia M. Wells

Chair

/s/ Keithley R. Joseph

Executive Director

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

ON BEHALF OF THE VIRGINIA STATE CORPORATION COMMISSION

/s/ Mark C. Christie  
Chair

/s/ Theodore V. Morrison, Jr.  
Commissioner

/s/ Judith Williams Jagdmann  
Commissioner

On behalf of the Public Service Commission of West Virginia

/s/ Jon McKinney  
Chairman

/s/ Edward Staats  
Commissioner

/s/ R. Michael Shaw  
Commissioner